



MINUTES

**City of Scottsdale
JUDICIAL APPOINTMENTS ADVISORY BOARD
Regular Meeting
5:30 p.m., Thursday, January 28, 2010
Human Resources Pinnacle Training Room
7575 E. Main Street**

PRESENT: Gordon Griller, Chairperson
Judge Jean Hoag
Christopher Lonn
Judge John Rea
Paul Rybarsyk
Francis Scanlon
Daniel Schmidt

STAFF: Judy Dewey
Jay Osborn

OTHERS: Janet Cornell, Court Administrator
Judge Orest Jejna
Mayor Jim Lane
Scott Maason, Esq.
City Judge Monte Morgan (arrived at 9:20 p.m.)
Judge George Preston

CALL TO ORDER

Chairperson Griller called the meeting to order at 6:04 p.m.

ROLL CALL

A formal roll call confirmed the presence of Board Members as noted above.

1. APPROVAL OF MINUTES OF PUBLIC MEETING CONDUCTED ON November 19, 2009

Mr. Osborn made suggestions for changes to the November 19, 2009 minutes.
**JUDGE HOAG MOVED APPROVAL OF THE MINUTES OF THE PUBLIC MEETING
ON NOVEMBER 19, 2009, AS AMENDED. VICE CHAIR RYBARSYK SECONDED**

THE MOTION, WHICH CARRIED BY A UNANIMOUS VOTE OF SEVEN (7) TO ZERO (0).

2. DISCUSSION OF THE BOARD'S ROLE IN THE JUDICIAL REAPPOINTMENT PROCESS, INCLUDING PUBLIC COMMENTS

Mayor Lane addressed the Board regarding this item. The City Council has placed more emphasis on the Boards, Commissions, and Task Forces, and does not wish to undercut the advisory mission and recommendations that come from them. He emphasized that the recent vote by the Council that went in opposition to a recent recommendation by the Board was in no way meant to cast any aspersions upon its recommendation. The City Council respects the JAAB's purpose, function, and decisions brought down through the years.

Mayor Lane explained how the Council made its recent decision not to reappoint Judge Morton as recommended by the Board, and stated it was not meant as an affront to the Board. The Board's role is important and a great service to the City.

Judge Hoag stated that a Councilmember's comment that the Board rubber-stamps its decisions did give her pause. She said the comment that the Board has never not recommended someone is objectively not true. She mentioned a comment made regarding not tolerating the relationship with the prosecutors and the bench. The issue is that this was a televised public meeting, and some of the comments left her with a bad taste.

Mayor Lane indicated he has discussed the issue of making sure there is a hard line between the prosecutor's office and the judges with the City Attorney and Presiding Judge. It is a concern because the City does routinely receive complaints regarding what the closeness in that relationship might imply, and the statistics in this case lent itself to the possibility.

Board Member Scanlon pointed out that many of the issues just brought up by Mayor Lane were thoroughly discussed in the last JAAB meeting. He feels the Board did its due diligence regarding the matter.

Board Member Lonn stated most people are impressed with the quality of the judiciary on the City Court's bench, especially compared to other municipalities. The Board spends a lot of time vigorously debating the issues as it relates to reappointments. The decision to recommend reappointment is a reflection of the quality of the people being recruited. The City should be proud of the members of the bench.

JAAB is very careful about whom it recommends, and a lot of time was spent evaluating and selecting Judge Morton.

Mayor Lane said the Council is proud of every aspect of the City. The bench is very important to Scottsdale. He was on Council when the City hired Judge Morton, and Council was very impressed with her and her qualifications. Her performance and issues that arose after the fact led to the ultimate decision not to reappoint her.

Board Member Lonn stressed that the recommendation to reappoint Judge Morton was not made lightly.

Vice Chair Rybarsyk reviewed the Board Members' credentials, and stated he hopes the Council understands the makeup of this Board; the opinions are coming from people who know what they are talking about. The Council should give due deference to who is on this Board when considering its opinions.

Mayor Lane explained that was taken into consideration when making this decision. He stated the Council's decision was not made on the idea that "We don't want any rubber-stamping; therefore, we're going to go in another direction." Even though those words may have been spoken, that was not the thought process that resulted in this decision. The Council did receive additional information that the Board did not have when making its recommendation.

Mayor Lane reiterated the Council does respect the Board, and this decision was not meant to cast a shadow on its abilities or recommendations.

Chair Griller stated this was an issue where the Board had to balance things out, and the Board voted unanimously to recommend Judge Morton's retention. Compared to many cities of comparable or even larger size, Scottsdale has one of the best limited jurisdiction courts he has ever seen.

Chair Griller expressed concern regarding diversity on the bench in Scottsdale. He suggested that be taken into consideration when a new judge is hired.

Mayor Lane thanked the Board for its time and service, and encouraged Board Members to call him or any member of the Council with questions in the future.

Mr. Osborn discussed the extra information that the Council had requested regarding Judge Morton's reappointment.

City Court Administrator Janet Cornell stated if the Board becomes aware of additional data that is needed for its deliberations, advanced notice to the court would be helpful. The sequence of events related to Judge Morton was unfortunate in that the court did not count the data that ended up being published. The files had to be audited manually in order to do that, which took quite a bit of time. Measures have been taken to capture these particular numbers in the future.

3. DISCUSSION OF JUDICIAL SURVEY RESULTS ON PRESIDING CITY JUDGE B. MONTE MORGAN

Board Member Schmidt said there is no real analysis in the cover letter; he asked that some professional analysis be provided with the survey results.

Board Member Schmidt noted Judge Morgan's survey results were very good in all areas. He is at or above the norm of all the judges in the cumulative data. His results in 2010 were comparable to those in the 2008 survey, but they were slightly improved.

Vice Chair Rybarsyk concurred, noting improvement in many areas.

Judge Hoag stated the results are impressive, particularly in contrast to 2008.

Chair Griller pointed out that in comparing the scores of 2010 and 2008, there appears to be one or two disgruntled employees in 2010. Only 12 of 52 employees responded to the survey, and there were a couple of employees who ranked Judge Morgan fairly low.

Board Member Lonn stated it is impressive that Judge Morgan had zero Notices of Change of Judge.

4. PREPARATION FOR PUBLIC HEARING

Chair Griller reviewed the public hearing process with the Board.

5. CONVENE PUBLIC HEARING AT 7:00 PM

Chair Griller opened public comment.

Court Administrator Janet Cornell indicated she has worked with Judge Morgan for almost eight years, and stated she was here to speak in support of his reappointment. She reviewed the court's requirements and accomplishments, noting that Judge Morgan has been there to partner with her to successfully lead and support the court through all these processes.

Chair Griller asked Ms. Cornell to discuss staffs' answers to the survey results, particularly the negative comments. Ms. Cornell indicated she believes that is the result of one or two disgruntled staff members. She indicated she is perplexed by those results, as most staff do not work alongside Judge Morgan on a daily basis.

Board Member Schmidt asked whether the lack of replies could be due to a general morale issue because of City cuts and policies. Ms. Cornell stated this is a common response rate to the judicial surveys.

Vice Chair Rybarsyk asked where the court stands in regard to the Supreme Court's mandates about the disposal of cases in a timely fashion, particularly DUI cases. Ms. Cornell said the court has mostly complied with those requirements; however, she did not have the exact statistics with her.

Board Member Scanlon asked what could be done to increase the number of survey returns. Ms. Cornell indicated she believes there is a natural apathy; in addition, many staff members probably believe they do not have enough information on which to respond. In addition, in many instances there is a fairly quick turnaround time on the surveys.

Chair Griller asked whether an electronic survey would result in more survey returns. Ms. Cornell explained some staff believe these surveys would clearly identify whom it was that answered. They have the same concerns regarding electronic surveys.

Board Member Judge Hoag asked whether Ms. Cornell has received complaints or concerns regarding the relationship between the prosecutor's office and the bench as it relates to the dispensing of justice. Ms. Cornell indicated that she has; however, unfortunately, they lump the police department and its policies with court operations. Many times they are criticizing the court for siding with law enforcement; however, that is a misinterpretation of how the court functions.

Attorney Scott Maason stated he has had the pleasure to appear in the Scottsdale Municipal Court on a regular basis, and indicated he is here to speak in support of Judge Morgan. Scottsdale has a very good bench with hardworking, smart, professional, courteous judges. He discussed Judge Morgan's courtesy toward the public and attorneys, and indicated he is always willing to explain the process to someone who is unfamiliar with court procedures. He is a very good communicator, which is very important as a judge.

Mr. Maason complimented the court on their knowledgeable and helpful staff, indicating things always move along very efficiently. His clients have always felt they were treated fairly at the Scottsdale Court.

Judge Orest Jejna spoke in support of Judge Morgan's reappointment, stating that he is extremely dedicated. Judge Morgan gives him complete latitude and judicial independence, and ultimately always supports his decisions. He is always available for questions, and is extremely supportive. He stated he wholeheartedly supports Judge Morgan's reappointment.

Judge Jejna commented about the employee surveys, and stated many of the questions do not apply to employees. He suggested producing a survey with questions tailored to the court staff.

Cave Creek Judge George Preston stated he has known Judge Morgan since the 1960s, and highly endorses him for reappointment.

CLOSE PUBLIC HEARING

Chair Griller closed the public hearing.

6. MOTION TO RECESS INTO EXECUTIVE SESSION

JUDGE HOAG MOVED TO ADJOURN INTO EXECUTIVE SESSION. BOARD MEMBER SCANLON SECONDED THE MOTION, WHICH CARRIED BY A UNANIMOUS VOTE OF SEVEN (7) TO ZERO (0).

RECONVENE PUBLIC MEETING FOLLOWING EXECUTIVE SESSION

Chair Griller reconvened the public meeting.

7. DISCUSS QUESTIONS FOR INTERVIEW OF JUDGE MORGAN

Board Member Judge Hoag stated she would like to ask Judge Morgan a question about his cases that were reversed on appeal.

Judge Rea stated he would be asking a question about the public comment regarding a ruling on Rule 10.1 motions.

Board Member Schmidt said he would like to ask Judge Morgan a question about how he divides his time between being a judge and setting the strategic direction for the court, as well as how he is addressing the morale issue in the court.

Vice Chair Rybarsyk indicated he would be asking him why house arrests are not done in Scottsdale.

Board Member Lonn stated he intends to ask for clarification on a complaint regarding motions to continue being heard on the day of trial.

Chair Griller stated he would ask Judge Morgan for information regarding his leadership role with the other judges. He stated he would also be asking him how he would be promoting diversity within the court.

Mr. Osborn reminded the Board of the admonition regarding the executive session.

8. INTERVIEW OF JUDGE MORGAN

Judge Morgan informed the Board that he would not be applying as presiding judge again after this application. He expressed his gratitude to the community and to the judiciary for the honor of serving as presiding judge. He thanked the Court Administrator and her staff for their efforts and hard work.

Board Member Scanlon asked what the Board could do to encourage the City Council to fill the vacant judge position.

Judge Morgan responded that the presiding judge has nothing to do with the selection or appointment of judges. For now, courtroom 5 will be used as a jury alternative courtroom, while the metrics and adjudication rates are analyzed over a period of time. Each judge is required to handle a huge volume of cases. He indicated he is not prepared to select another associate judge; rather, he would assist with the encouragement and attraction of a new presiding judge. This individual should be selected during his next term to allow an opportunity for the new judge to be trained and indoctrinated into the court.

Judge Morgan discussed the need for courtroom expansion and more judges in the future.

Board Member Lonn asked whether there was someone who could elevate to the presiding judge position from within. Judge Morgan indicated he would be dedicated to attracting people to the court during his next term.

Board Member Lonn asked Judge Morgan to explain how motions to continue a trial are handled, and whether they are heard on the day of trial. Judge Morgan stated motions to continue jury trials and bench trials are heard on a daily basis. There is a variety of reasons to continue a case, and much depends on the status of the case.

Noting changes within the City, Board Member Schmidt asked what measures he has taken to try to stabilize employee morale. Judge Morgan explained a court tools survey has been implemented to try to determine what bothers employees most. The court is very streamlined, and it would be very difficult to reduce staff any further.

Staff has expressed appreciation to the administration for standing up for them, which does help build morale. They know he is there to help protect the integrity of the court. Staff is kept informed on issues affecting them via email and monthly staff meetings.

Judge Hoag asked Judge Morgan to discuss three of his cases where his decisions were reversed on appeal. He explained that these cases had to do with the statute being changed for super extreme DUIs. The statute was changed to state that a blood alcohol level in excess of .20 was considered a super extreme DUI; however, the statute was completely silent as to whether this was at the time of driving, within two hours of driving, et cetera. He felt he could not enforce the statute since it was not clear.

Board Member Rybarsyk asked whether there has been discussion for Scottsdale to implement a house arrest program, and if it is within his power to make suggestions in that regard. Judge Morgan said he is very prepared to go forward with that program. He has already established a program, drafted a PowerPoint, and gathered all of the statistics. He indicated that law enforcement, the Mayor, and all of the charter officers are on board. Between \$200,000 and \$1 million a year in jail costs could be saved with a home monitoring program. The biggest block to pushing this forward to the Mayor and Council has been verbalized opposition by the City Prosecutor. He stated he would be presenting this issue to City Council for ordinance adoption.

Judge Rea stated some of the surveys were returned with concerns regarding how Rule 10.1 was being handled and asked for clarification. Judge Morgan stated that Rule 10.1s are for cause and he has only had two in the last year, both having to do with the hospital case in Judge Morton's court. He clarified that he denied it, because the case had gone up on appeal, there was a new lawyer on the case, and the case was not situated for any type of a disqualification to be filed at the time.

Chair Griller asked Judge Morgan what he believes the role and responsibility of the presiding judge is in helping and guiding the other judges in regard to process and procedure. Judge Morgan explained that presiding judges interact with associate judges on the basis of collaboration. He indicated they all come together to discuss procedures; however, he has never told a judge how to rule on a case. The judges at the court collaborate on a regular basis regarding all types of issues. If a judge needs immediate help on an issue, someone always makes themselves available for questions. The judges always work together to determine the most efficient way to administer specific court rules and policies.

Chair Griller stated the Board was proud to have Judge Morgan in Scottsdale, and thanked him for his service to the City.

Judge Morgan stated he was honored to have been able to serve the City of Scottsdale. He discussed his retirement and succession planning. He read a letter he received from Larry Kazan encouraging him to apply for reinstatement.

9. MOTION TO RECESS INTO EXECUTIVE SESSION

The Board determined it was not necessary to recess into executive session.

10. DISCUSSION OF AND REAPPOINTMENT RECOMMENDATION REGARDING JUDGE MORGAN

Chair Griller stated the comments the Board has received parallel what Judge Morgan read in the letter encouraging him to apply for reinstatement.

Judge Hoag noted his JPR was superb, and the recommendations to retain him were superlative.

Judge Rea stated he was very impressed with Judge Morgan.

Board Member Lonn stated he seems to be doing well both with courtroom work and his administrative work, which is of a high value to the City and the community.

Board Member Schmidt noted that even after ten years, Judge Morgan's scores and references continue to improve.

BOARD MEMBER SCANLON MOVED TO REAPPOINT ASSOCIATE CITY JUDGE MORGAN AS PRESIDING JUDGE. JUDGE REA SECONDED THE MOTION, WHICH CARRIED BY A UNANIMOUS VOTE OF SEVEN (7) TO ZERO (0).

11. ETHICS TRAINING

Jay Osborn played the annual ethics training video for the Board, who had no questions upon completion.

12. FUTURE AGENDA ITEMS

The Board had no suggestions for future agenda items at this time.

ADJOURNMENT

With no further business to discuss, being duly moved and seconded, the meeting of the Scottsdale Judicial Appointments Advisory Board adjourned at 10:26 p.m.

Respectfully submitted,
Judy Dewey
Sr. HR Analyst

Reviewed by,
Gordon Griller
JAAB Chairperson